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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-386

STATE OF IDAHO, STATE TAX COMMISSION,
Petitioner,

vs.

MARGARET ROSE MAHONEY, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IDAHO

BRIEF FOR RESPONDENT IN OPPOSITION

Respondent respectfully prays that a Writ of Certiorari not be issued to review the final order of the Supreme Court of the State of Idaho, entered herein on July 8, 1974, reaffirming the Idaho Supreme Court's Decision in John George Mahoney, Plaintiff, Margaret Rose Mahoney, Plaintiff-Respondent v. State of Idaho, State Tax Commission, Defendant-Appellant, 524 P.2d 187 (Petitioner's Appendix II.)

OPINION BELOW

The final Order of the Court below on the Petition for Rehearing reaffirmed Mahoney, supra, (Petitioner's Appendix I.)

JURISDICTION:

Petitioners statement of jurisdiction is insufficient in that, except by reference to his appended Idaho State Court opinion it does not disclose anything about the content of the opinion or judgment sought to be reviewed.

QUESTIONS PRESENTED

Respondents believe that the following statement of Questions presented is somewhat more accurate than as worded by Petitioner.

1. Does the State of Idaho have jurisdiction to levy and collect a tax on cigarettes sold by members of the CDA Indian Tribe on Indian Trust Lands within the CDA Indian Reservation?

2. Does such extension of the Idaho State taxing Authority constitute an illegal interference with the sovereignty of the CDA Tribe and its exercise of self government?

3. Does the enforcement of the Idaho Cigarette Tax laws against such an Indian retailer violate Article 1, Sec. 8 of the U. S. Constitution (The Commerce Clause) as an unreasonable or unwarranted state interference with or burden on Indian Commerce?

4. Does the United States and the Tribe acting separately or jointly have exclusive authority and jurisdiction to license, tax and regulate such retail sales by Indians on Reservation lands?

5. Does the levying and collecting of the Idaho Tax against the Indian retailer illegally interfere with and impair the authority and jurisdiction of the United States and the Tribal Government in the same field?

CITATIONS

In addition to the Citations by Petitioner, the following are also involved:

1. Proclamation of President U. S. Grant, dated Nov. 8, 1873 establishing the Coeur d'Alene Reservation (Appendix I, page A-1).

2. The Agreement of 1887 and 1889, codified as 26 U. S. Stat. 1026, Fifty-first Congress, Session II, Ch. 543. (Appendix II, page A-2).

3. Law and Order Regulations of the Coeur d'Alene Tribe dated August, 1938, 25 C.F.R. 11.2. (Appendix III, page A-15).

4. Constitution and By-laws of the Coeur d'Alene Tribe (Appendix IV, page A-18).

5. Coeur d'Alene Tribal Law and Order Code (Appendix V, page A-24).

6. Coeur d'Alene Tribal Tobacco Ordinance (Appendix VI, page A-28).

7. The following provision of the Idaho Code:
   67 Idaho Code 5101-5103 (Appendix VII, page A-37).

8. The following provisions of the United States Code:
   25 U.S.C. 331 (Appendix VIII, page A-39).
   25 U.S.C. 461-463 (Appendix IX, page A-41).
   25 U.S.C. 476 (Appendix X, page A-43).
   25 U.S.C. 1301-1322 (Appendix XI, page A-45).

RESPONDENTS' STATEMENT OF CASE

Petitioner's statement of the Case while accurate is limited to the immediate facts of the situation involved in the arrest of John George Mahoney as he was engaged in the sale of cigarettes to the general public from his store located on Indian trust land of the Coeur d'Alene Indian Reservation. It does not concern itself with the highly important history of the establishment of the Coeur d'Alene Indian Reservation and subsequent events in which, in the exercise of its sovereign powers as a recognized Indian tribe, the Coeur d'Alene Tribe enacted a Constitution and By-Laws, established a tribal government, enacted a Law and Order Code and finally, during the pendency of this action, a Tobacco Ordinance licensing, taxing and regulating Indian smokeshops such as the one operated by John Mahoney.

1. Historical Background and Roots of Tribal Sovereignty

The Coeur d'Alene Tribe has existed from time immemorial in the geographical area which included the Coeur d'Alene Reservation as it is today. In 1955, the Indian Claims Commission, in ruling on the question of title in

the Tribe's claim, held that it had aboriginal title to about 4,000,000 acres surrounding its present location.

Favored by climate and geography, this tribe advanced faster than neighboring tribes and, under the direction of the missionaries beginning in about 1838, had by 1873 become largely agricultural and was described in the various departmental and congressional reports as one of the most civilized tribes in America.

In 1873 it entered into an Agreement ceding its vast aboriginal lands, and on November 8, 1873, President Ulysses S. Grant by Executive Order formed the Coeur d'Alene Reservation (Appendix I, page A-1).

In 1887 the Northwest Indian Commission headed by John V. Wright negotiated with the Coeur d'Alenes a new Agreement (Appendix II, page A-2) similar to the 1873 Agreement. This new Agreement, together with a supplemental Agreement of 1889 by which the Tribe agreed to cede additional lands from the north end of its reservation, were codified and approved by Congress in 1891 (26 U. S. Stat. 1026; 51st Congress. Sess. II – Ch. 543.)

We have, therefore, a Tribe that has functioned from time immemorial on the very lands that are here involved. It continued to so function until it began to formalize its tribal government, first by enacting its own Law and Order Regulations in August, 1938 (cover sheet, Appendix III, page A-15, and also cited at 25 CFR 11.2). Finally, the

Tribe, already operating as a quasi-municipal form of government adopted its formally recognized and approved Constitution and By-Laws (Appendix IV, page A-18).

This Constitution, while comprehensive, does not purport to be the sole source of tribal governmental power. Just as the United States has certain sovereign powers as a member of the family of nations which are assumed or said to be inherent or implied, so has the Coeur d'Alene Tribe. With its roots in the distant past, it has broad implied, inherent, unwritten powers of sovereignty that amplify and go beyond the specific written grants found in its Constitution or in Federal Statutes.

2. Change in Reservation Land Base

The Reservation land base of the 1873 Reservation was 590,000 acres. By the supplemental Agreement of 1889 (Appendix II, page A-8) the Tribe was induced to cede 240,000 acres from the north end of the 1873 Reservation leaving the present reservation of 350,000 acres. Much of this land base was eroded by homestead and mineral entry and, finally, by the checkerboarding result of the granting of fee titles and sales to non-Indians of many allotments. As a result, as Petitioner contends, this is a "checkerboarded reservation" with intermingled Indian and non-Indian lands.

This checkerboard nature of the Coeur d'Alene Indian Reservation is the rule rather than the exception. Most

modern reservations are similarly checkerboarded. It is acknowledged that there is some legal controversy about the extent of Tribal and Federal jurisdiction and the effective sovereignty of the tribes over non-Indian lands on the reservations. There is no citable legal authority, however, to distinguish the extent of tribal sovereignty and jurisdiction over Indian lands on a checkerboarded reservation and over Indian lands on a non-checkerboarded reservation.

3. Tribe's Current Law and Order Code and Tobacco Ordinance

In 1962 the Tribe adopted its present Law and Order Code (cover page and table of contents, Appendix V, page A-24). The Tribe has what the Code provides: a modern court, a full-time judge and personnel, and equipment and vehicles similar to that of a justice court system in any comparable rural area.

Its Law and Order Code is in a continual process of amendment and upgrading and, on July 13, 1972, the Coeur d'Alene Tribal Council adopted the CDA Tobacco Ordinance (Appendix VI, page A-28). The Appendix includes the letter of December 1, 1972 from the Area Director of the Bureau of Indian Affairs approving it. The Tribe, by this Ordinance, formalized and effectuated its preexisting jurisdiction and sovereignty to license and regulate Indian smokeshops and to levy an excise tax of 2½ cents per pack on all sales.

ts petition that

Petitioner states on page 8 of lene Tribal interest in Re-

> "There was no Coeur d prise; it was stipulated that
> spondent's business ente ng a private business enter-
> Respondent was conduct ning a tribal function."
> prise, and was not perfo ust be read now in the con-

This statement by Petitioner nnce which requires licenses
text of the tribal tobacco ordirts them to an excise tax and
for such smokeshops and subjcions. While there may not
various regulations and limitsmokeshop, it is closely gov-
be a tribal interest per se in the
erned and taxed by the Tribe its first decision of Septem-

The Idaho Supreme Court, ilix II), did not have knowl-
ber 5, 1973 (Petitioner's Appeinance (not adop'·d by the
edge of the Tribe's Tobacco Or
Tribe until July 13, 1972). se further facts were called

On Petition for rehearing th preme Court in the Amicus
to the attention of the Idaho S e Tribe. That Court, in its
Curiae Brief of the Coeur d'Al y 8, 1974 (Petitioner's Ap-
decision on rehearing, dated J pinion without comment.
pendix I) adhered to its former

GRANTING WRIT

ARGUMENT AGAINS ion Accurately States and v to Idaho Cigarette Tax

1. Idaho Supreme Court Dec Applies Federal Indian L Statutes

oner's argument is that it
The whole "thrust " of Peti aho's own Supreme Court
disagrees with the decision of I rom the United States Su-
and therefore needs "guidance" of state taxation.
preme Court in the complex fiel

This argument would be valid if the Mahoney tax case had been lost by Petitioner. Then the Indian Tribe or interests would, as they did in the *Tonasket* case in the State of Washington,, appeal to the United States Supreme Court for the so-called "guidance."

The Mahoney tax case is surprisingly unique. It is one of the very few instances, if not the only instance, in the history of Indian law when a State Supreme Court held in favor of the Indian tax exemption and immunity. The Idaho Supreme Court, in its well-reasoned opinion, interpreted the Idaho state law in its relationship to the relevant Indian exemptions and immunities and, by holding in favor of Respondent, gave the State Tax Commission the unequivocal "guidance" Petitioner states it needs.

This Court is asked by the State Tax Commission to review the decision of its own Supreme Court upholding the Indians' side of the case.

The Idaho Court's decision covered all bases.

a. It concluded by logic and by the wording of this Court's remand of the Tonasket case, that the "Supreme Court of the United States thereby indicated that the principles enunciated in McClanahan are applicable in cases such as this involving a state's attempt to tax on-reservation sales consumated by Indian sellers." It then stated:

> "The holding of the Court in *McClanahan* is perhaps best described by the Supreme Court itself in *Mescalero Apache Tribe v. Jones*, 411 U. S. 145, 93

S.Ct. 1267, 1270 (1973), released the same day as *McClanahan:*

> '(I)n the special area of state taxation, absent cession of jurisdiction or other federal statutes permitting it, there has been no satisfactory authority for taxing Indian reservation lands or Indian income from activities carried on within the boundaries of the reservation, and *McClanahan v. State Tax Commission of Arizona,* 411 U. S. 164, 93 S.Ct. 1257, 36 L.Ed.2d 129, lays to rest any doubt in this respect by holding that such taxation is not permissible absent congressional consent'." (Petitioner's Appendix II, p. 24-25)

b. It discussed the Commerce Clause of the Federal Constitution and the Indian cases interpreting it and concluded that:

> "In the case before us today, the incidence of the tax falls squarely upon sales by an Indian on a reservation; this tax is nothing less than a direct tax upon commerce with the Indian tribes, and 'such taxation is not permissible absent congressional consent'." (Citing *Mescalero* and *McClanahan.*) (Petitioner's Appendix II, p. 30)

c. It discussed and considered the applicability of the Buck Act and stated: "With these opinions fresh in mind, Congress expressly chose to exclude reservation Indians from the purview of the Buck Act, 4 USCA Sec. 109." (Petitioner's Appendix II, p. 33)

d. It analyzed and discussed the extent to which there had to be an infringement on tribal self-government and, applying the principles enunciated in this Court's decision in *McClanahan,* concluded that there need not be a direct

infringement on tribal self-government. [Note: The Idaho Court did not at that time know of the Tribe's Tobacco Ordinance. Had it known of it, it would most certainly have found that while a direct infringement on tribal self-government was not required, there was in fact such an infringement.]

e. The Idaho Court then concluded that "In the absence of congressional consent, the Idaho State Tax Commission had no jurisdiction to tax the on-reservation sale of cigarettes by an Indian seller, whether the purchasers were Indians or non-Indians." (Petitioner's Appendix II, pg. 38)

f. It is obvious on reading the original opinion of the Idaho Supreme Court that the Court took great care and exercised a high degree of legal scholarship in reaching and wording its opinion. It did not let the matter rest there. It granted the Tax Commission's Petition for Rehearing. Every conceivable argument was advanced on rehearing with other states, other non-Indian interests, the Coeur d'Alene Indian Tribe and other tribes joining in the legal confrontation with copious briefs and arguments.

g. The Idaho Court on rehearing had the benefit of the decisions in the following cases:

Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana ("Tribes") et al. v. John C. Moe et al., Civil No. 2145 (D. C. Mont. May 9, 1974) in which a three judge panel held that under the particular Montana taxing statutes an Indian smokeshop could be required to "pre-collect" cigarette taxes to be sold to non-Indians.

Walker River Paiute Tribe and Stephen King v. John Sheehan et al., Civil No. R-2888-BRT (D. C. Nev. May 3, 1974), which held that under a state taxing statute similar to that of Idaho it was a prohibited interference with commerce with an Indian reservation to intercept outside the Walker River Reservation shipments of untaxed cigarettes bound to cigarette outlets on the reservation.

h. The Court nevertheless entered its order on July 8, 1974 adhering "to the views expressed and the conclusion reached in our earlier opinion." (Petitioner's Appendix I)

Respondent respectfully suggests that it seems absurd that a State Tax Commission should seek "guidance" from the United States Supreme Court in the face of a decision by its own Supreme Court fully "guiding" it in the application of its tax laws to an Indian reservation. As a practical matter, how can this Court, except as it has already done in the *Williams v. Lee* 358 U. S. 217 (1958), *Warren Trading Post v. Tax Commission*, 380 U. S. 685 (1965), and the *McClanahan v. Arizona State Tax Commission*, 411 U. S. 164 (1973), family of cases, hope to frame a decision that can give sufficient "guidance" which considers and anticipates the differing state tax laws as well as their future amendments.

2. Petitioner Misunderstands and Misapplies the Tonasket Case

Contrary to Petitioner's analysis on page 12 of its petition, this Court, in remanding the *Tonasket* case to the Washington Supreme Court, implied that *McClanahan* was

controlling on *Tonasket*. This Court said in its remand:

> "The judgment of the Supreme Court of Washington is vacated, and the case is remanded to that Court for reconsideration in light of sections 6 and 7 of c. 157, 1972 Extraordinary Session Laws of the State of Washington, and this Court's decision in *McClanahan v. Arizona State Tax Commission, ante.* (411 U. S. 451, 93 S.Ct. 1941, 36 L.Ed.2d 385)

In effect, this Court recognizing the difficulty in issuing guidance or clarifying opinions for every set of state statutes asked the Washington Court to clarify its opinion in view of McClanahan and its own more recently enacted statutes.

It is interesting to note what the Washington Court did when faced with this remand. It merely held that the State of Washington had legally and validly assumed total State civil and criminal jurisdiction on the Colville Reservation and was therefore authorized to extend its cigarette excise tax to Indian retailers serving non-Indian customers upon the Reservation. Then, in considering its 1972 Extraordinary Session Laws, it found that Indian smokeshops such as the one operated by Tonasket on the Colville Reservation were being operated at this time in compliance with Washington State law and, under said Session laws, could sell untaxed cigarettes to non-Indians. (84 Wn.2d 164, 525 P.2d 744, August 8, 1974).

We are informed that that case is being readied for appeal to the U. S. Supreme Court.

3. Although Small in Numbers and Tribal Land Base, the Coeur d'Alene Tribe is as Viable and Sovereign as the Larger Navajo Tribe

Petitioner takes the position (page 13 of Petition) that whereas the Navajo Reservation is an "autonomous and viable self-government entity," the Coeur d'Alene Reservation is not. This is simply not true. As the Appendix of this brief and our Statement of the Case reflect, the Coeur d'Alene Indian Tribe since very early days has been considered to be one of the most viable, autonomous, advanced tribal entities in America. It has every attribute of tribal government.

Petitioner does not cite, and cannot cite, one case in this Court or any other court which makes a legal distinction based on land area, size of tribe and extent of tribal government which would indicate that a decision such as in *McClanahan* would have been any different if this Court had been dealing with a smaller tribe.

In alleging the lack of viability of the Tribe, Petitioner implies the argument that it should prevail because tribal members receive state services without paying taxes. This is an irrelevant argument and completely ignores the functions and activities of the Coeur d'Alene Tribe wherein the Tribe expends what income it does have in a wide variety of governmental and community services that characterize modern tribes.

4. The "Cluster of Decisions" Referred to by Petitioner Are Actually Consistent and Not Contradictory

Petitioner implies (Petition, page 15) that there are hopeless contradictions between a "recent cluster of decisions" in Washington, Nevada, Montana and this *Mahoney* case "which cries for leadership and direction from this Court." Actually, the cited cases can be reconciled but turn on the different State legal and factual backgrounds and demonstrate the difficulty of this Court going further than *McClanahan* in providing "leadership and direction."

Both *Confederated Salish and Kootenai Tribes et al. v. Moe et al., supra,* and *Walker River Paiute et al. v. Sheehan et al., supra,* recognize, as does *Mahoney,* that this Court's decision in *McClanahan* and earlier cases precludes the imposition of a state excise tax upon the retail sale of cigarettes by an Indian on the reservation. The *Confederated Tribes* case—erroneously, we believe—held that Montana could require an Indian seller to "precollect" a tax *imposed upon non-Indian cigarette purchasers.* But even the *Confederated Tribes* court denied the state any authority to impose a tax upon the Indians, either as cigarette purchasers or as unlicensed sellers.

It is not correct to assert, as Petitioner does at page 18 of its Petition, that "The Montana District Court adopted an entirely different reading of this Court's decision in *McClanahan.*" That Court—like the Supreme Court of Idaho and the U. S. District Court for the District of Nevada—in-

terpreted the *McClanahan* decision as applicable to taxes on sales by reservation Indians, but found the incidence of the Montana tax to fall elsewhere.

Additionally, the Montana District Court found on page 12 of its slip opinion that

> "pursuant to P. L. 280, 27 Stat. 488, August 15, 1953 the State of Montana assumed complete criminal and limited civil jurisdiction over Indians residing on the Flathead Reservation."

This is certainly not true of the Coeur d'Alene Reservation. Petitioner does not, and can not, assert that the Coeur d'Alene is what is called a "Public Law 280 Reservation" as is true on the Colville in *Tonasket* and apparently on the Flathead.

Petitioner suggests that *Tonasket* leaves room for argument that the on-reservation tax exemptions so clearly enunciated by a unanimous court in *McClanahan* were intended to extend only to Indian land and Indian income. But if *McClanahan* does not apply to cigarette taxes, why remand *Tonasket*?

Thus, all four of the Indian cigarette tax cases, *Flathead*, *Walker River*, *Mahoney* and *Tonasket*, are consistent in holding the State lacks jurisdiction and authority to impose excise taxes upon Indian sellers on the reservation—except, perhaps, when the Tribe has ceded general jurisdiction to the State, as was true in *Tonasket* and apparently in the Montana case.

5. The Idaho Court's Interpretation of the Commerce Clause

The writers are perplexed by Petitioner's statements on pages 14 and 15 of its Petition that the Idaho Court's reliance on either the Commerce Clause or the Buck Act "is completely unprecedented."

That Court not only correctly relied on the Commerce Clause but did so in a most scholarly manner. It, as has this Court, found in the Commerce Clause the constitutional "well spring" of the jurisdiction of the United States over Indian tribes and reservations. It begins its discussion with this:

> "The federal government's authority over Indian matters derives from the Federal Constitution's delegation to its responsibility for regulating commerce with Indian tribes and for making treaties . . ." (Petition, Appendix II, page 25)

As reflected on pages 26 and 27 of the Petition, the Idaho Court then "covered the waterfront" in supporting citations, including *Worcester, Boyer, Makah* and *Mescalero.* The Court then concluded that:

> ". . . the Commerce Clause applies with equal force to commerce 'with the Indian tribes.' It follows, therefore, that the Commerce Clause precludes the imposition of Idaho sales tax upon the on-reservation sale of cigarettes by members of an Indian tribe to non-Indian purchasers." (Citing McClanahan)

The very discussion by the Idaho Court, alluded to by Petitioner, highlights the absurdity of this argument. One need go no further than the much quoted publication of

the Office of the Solicitor of the U. S. Department of the Interior entitled "Federal Indian Law," pages 26 to 30 and other sections, and its famous predecessor by Felix S. Cohen, "Handbook of Indian Law," pages 10, 69, 91 and 353 and other sections, to know that the very basis of non-State taxing jurisdiction over Indians on Indian reservations is the Commerce Clause of the United States Constitution.

The first publication, on page 27, and the second publication (The Handbook), on page 91, contain this statement:

> "The Commerce Clause is the only grant of power in the Federal Constitution which mentions Indians. The congressional power over commerce with the Indian tribes plus the treaty making power is much broader than the power over commerce between the States."

Each quotation is followed by the citation of many of the landmark Indian cases decided by this Court.

6. The Idaho Court's Interpretation of the Buck Act

Equally surprising is the statement that the Court's reliance on the Buck Act is "unprecedented."

The treatment by the Idaho Court of the Buck Act can be characterized as "hornbook law." The Court merely acknowledged that, while the Buck Act (4 USCA 105-110) permits states to levy sales, use or incomes taxes within any federal area, Section 109 provides that

> "Nothing in Sections 105 and 106 of this title shall

be deemed to authorize the levy or collection of any tax on or from any Indian not otherwise taxed . . ."

Petitioner seems to ignore the Idaho Court's reliance upon and quotation from the *McClanahan* case (Petition, page 34) wherein it quoted this Court in its application of the Buck Act to the principles enunciated in *McClanahan*.

CONCLUSION

The Idaho State Tax Commission, in initially seizing the cigarettes in question, sought to enforce Idaho's Cigarette Tax laws against an Indian retailer doing business on Indian land on his own Reservation. With the legal issues thus laid, the District Court's and finally the State Supreme Court's scholarly opinions considered the applicable Idaho statutes but, in applying the Commerce Clause, the Buck Act and earlier decisions of the U. S. Supreme Court, found that the Idaho statutes were unenforceable in such a situation. The appealed from decision was correct both in its application of Federal Indian Law and of the Idaho Statutes, and therefore the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

JERROLD E. PARK
McFadden & Park
St. Maries, Idaho 83861

ROBERT D. DELLWO
Dellwo, Rudolf & Schroeder
1016 Old National Bank Building
Spokane, Washington 99201
Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on this 29 day of November, 1974, three copies of Brief in Opposition to Petition for a Writ of Certiorari to the Supreme Court of the State of Idaho were mailed, postage prepaid, to Robert L. Miller, Chief Deputy Attorney General, State of Idaho, attorney for Petitioner, Box 36, Boise, Idaho 83807, and Daniel H. Israel, Native American Rights Fund, 1506 Broadway, Boulder, Colorado 80302, and I further certify that all parties required to be served have been served.

ROBERT D. DELLWO
Attorney for Respondent

APPENDIX

APPENDIX I

EXECUTIVE MANSION, *November 8, 1873.*

It is hereby ordered that the following tract of country in the Territory of Idaho be, and the same is hereby withdrawn from sale and set apart as a reservation for the Coeur d'Alene Indians, in said Territory, viz:

> "Beginning at a point on the top of the dividing ridge between Pine and Latah (or Hangman's) Creeks, directly south of a point on said last-named creek, 6 miles above the point where the trail from Lewiston to Spokane Bridge crosses said creek; thence in a northeasterly direction in a direct line to the Coeur d'Alene Mission, on the Coeur d'Alene River (but not to include the lands of said mission); thence in a westerly direction, in a direct line, to the point where the Spokane River heads in, or leaves the Coeur d'Alene Lakes; thence down along the center of the channel of said Spokane River to the dividing line between the Territories of Idaho and Washington, as established by the act of Congress organizing a Territorial government for the Territory of Idaho; thence south along said dividing line to the top of the dividing ridge between Pine and Latah (or Hangman's) Creek; thence along the top of the said ridge to the place of beginning."

U. S. GRANT.

APPENDIX II

FIFTY-FIRST CONGRESS. SESS. II. CH. 543. 1891.

Section 19. The following agreement entered into on the part of the United States by John V. Wright, Jared W. Daniels and Henry W. Andrews, Commissioners with the Coeur d'Alene Indians in Idaho Territory signed on the part of said Indians by Chief Andrew Seltice, and others which bears date March twenty-sixth, eighteen hundred and eighty-seven, and now on file in the Interior Department, is hereby accepted, ratified, and confirmed and is in the following words, to-wit:

Agreement with Coeur d'Alene.

This agreement made pursuant to an item in the act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and eighty-seven, and for other purposes, "approved May fifteenth, eighteen hundred and eighty-six, by John V. Wright, Jared W. Daniels, and Henry W. Andrews, duly appointed commissioners on the part of the United States and the Coeur d'Alene tribe of Indians now residing on the Coeur d'Alene Reservation, in the Territory of Idaho, by their chiefs, headmen, and other male adults, whose names are hereunto subscribed, they being duly authorized to act in the premises, witnesseth:

Article 1.

Whereas said Coeur d'Alene Indians were formerly possessed of a large and valuable tract of land lying in the Territories of Washington, Idaho, and Montana, and whereas said Indians have never ceded the same to the United States, but the same, with the exception of the present Coeur d'Alene Reservation, is held by the United States and settlers and owners deriving title from the United States, and whereas said Indians have received no compensation for said land from the United States: Therefore,

Article 2.

For the consideration hereinafter stated the said Coeur d'Alene Indians hereby cede, grant, relinquish, and quitclaim to the United States all right, title, and claim which they now have, or ever had, to all lands in said Territories and elsewhere, except the portion of land within the boundaries of their present reservation in the Territory of Idaho, known as the Coeur d'Alene Reservation.

Article 3.

The said Coeur d'Alene Indians agree and consent that the Upper and Middle bands of Spokane Indians residing in and around Spokane Falls in the Territory of Washington, may be removed to the Coeur d'Alene Reservation and settled thereon in permanent homes on the terms and conditions contained in an agreement made and entered into by and between John V. Wright, Jared W. Daniels, and Henry

W. Andrews, commissioners on the part of the United States and said Spokane Indians, concluded on the fifteenth day of March, eighteen hundred and eighty-seven, at Spokane Falls, in the Territory of Washington.

Article 4.

And it is further agreed that the tribe or band of Indians known as Calespels, now residing in the Calespel Valley, Washington Territory, and any other bands of non-reservation Indians now belonging to the Colville Indian Agency, may be removed to the Coeur d'Alene Reservation by the United States, on such terms as may be mutually agreed on by the United States and any such tribes or bands.

Article 5.

In consideration of the foregoing cession and agreements, it is agreed that the Coeur d'Alene Reservation shall be held forever as Indian land and as homes for the Coeur d'Alene Indians, now residing on said reservation, and the Spokane or other Indians who may be removed to said reservation under this agreement, and their posterity: and no part of said reservation shall ever be sold, occupied, open to white settlement, or otherwise disposed of without the consent of the Indians residing on said reservation.

Article 6.

And it is further agreed that the United States will expend for the benefit of said Coeur d'Alene Indians the sum of one hundred and fifty thousand dollars, to be expended

under the direction of the Secretary of the Interior as follows: For the first year, thirty thousand dollars, and for each succeeding year for fifteen years, eight thousand dollars. As soon as possible after the ratification of this agreement by Congress, there shall be erected on said reservation a saw and grist mill, to be operated by steam, and an engineer and miller employed, the expenses of building said mill and paying the engineer and miller to be paid out of the funds herein provided. The remaining portion of said thirty thousand dollars, if any, and the other annual payments shall be expended in the purchase of such useful and necessary articles as shall best promote the progress, comfort, improvement, education, and civilization of said Coeur d'Alene Indians, parties hereto.

Article 7.

It is further agreed that if it shall appear to the satisfaction of the Secretary of the Interior that in any year in which payments are to be made as herein provided said Coeur d'Alene Indians are supplied with such useful and necessary articles and do not need the same, and that they will judiciously use the money, then said payment shall be made to them in cash.

Article 8.

It is further agreed that any money which shall not be used in the purchase of such necessary articles or paid over, as provided in article seven, shall be placed in the Treasury of the United States to the credit of the said Coeur d'Alene

Indians, parties hereto, and expended for their benefit, or paid over to them, as provided in the foregoing articles.

Article 9.

It is further agreed that in the purchase for distribution of said articles for the benefit of said Indians the wishes of said Indians shall be consulted as to what useful articles they may need, or whether they need any at all, and their wishes shall govern as far as it is just and proper.

Article 10.

It is further agreed that in the employment of engineers, millers, mechanics, and laborers of every kind, preference shall be given in all cases to Indians, parties hereto, qualified to perform the work and labor, and it shall be the duty of all millers, engineers, and mechanics to teach all Indians placed under their charge their trades and vocations.

Article 11.

It is further agreed that in addition to the amount heretofore provided for the benefit of said Coeur d'Alene Indians the United States, at its own expense, will furnish and employ for the benefit of said Indians on said reservation a competent physician, medicines, a blacksmith, and carpenter.

Article 12.

In order to protect the morals and property of the Indians, parties hereto, no female of the Coeur d'Alene tribe shall be

allowed to marry any white man unless, before said marriage is solemnized, said white man shall give such evidence of his character for morality and industry as shall satisfy the agent in charge, the minister in charge, and the chief of the tribe that he is a fit person to reside among the Indians; and it is further agreed that Stephen E. Liberty, Joseph Peavy, Patrick Nixon, and Julien Boutelier, white men who have married Indian women and with their families reside on the Coeur d'Alene Reservation, are permitted to remain thereon, they being subject, however, to all laws, rules, and regulations of the Commissioner of Indian Affairs applicable to Indian reservations.

Article 13.

It is further agreed and understood that in consideration of the amount expended in buildings and other improvements on said Coeur d'Alene Reservation for religious and educational purposes by the De Smet Mission, and valuable services in the education and moral training of children on said reservation, and in consideration that the Indians, parties hereto, have donated for said purposes one section of land on which is situated the boys' school, one section on which is situated the girl's school, and one section of timbered land for use of the schools, that said De Smet Mission and its successors may continue to hold and use said three sections of land and the buildings and improvements thereon so long as the same shall be used by said De Smet Mission and its successors for religious and educational purposes.

Article 14.

This agreement shall not be binding on either party until ratified by Congress.

In testimony whereof the said John V. Wright, Jared W. Daniels, and Henry W. Andrews, on the part of the United States, and the chiefs, headmen, and other adult Indians, on the part of the Indians, parties hereto, have hereunto set their hands and affixed their seals.

Done at De Smet Mission on the Coeur d'Alene Reservation, in the Territory of Idaho, on this the twenty-sixth day of March, in the year of our Lord one thousand eight hundred and eighty-nine.

Sec. 20. That the following agreement entered into with the said Coeur d'Alene Indians by Benjamin Simpson, John H. Shupe, and Napoleon B. Humphrey, Commissioners on the part of the United States, signed by said Commissioners and by said Andrew Seltice, Chief, and others, on the part of said Indians, which agreement bears date September ninth, eighteen hundred and eighty-nine, and is now on file in the Interior Department, is hereby accepted, ratified, and confirmed, and is in the following words, to wit:

AGREEMENT.

This agreement, made pursuant to an item of an Act of Congress, namely: Section 4 of the Indian appropriation act, approved March two, eighteen hundred and eighty-nine, (25 Stat., 1002), by Benjamin Simpson, John H.

Shupe, and Napoleon B. Humphrey, duly appointed commissioners on the part of the United States, parties of the first part, and the Coeur d'Alene tribe of Indians, now residing on the Coeur d'Alene Reservation in the Territory of Idaho, by their chiefs, headmen, and other male adults whose names are hereunto subscribed, parties of the second part witnesseth:

Article 1.

For the consideration hereinafter named the said Coeur d'Alene Indians hereby cede, grant, relinquish, and quitclaim to the United States, all the right, title, and claim which they now have, or ever had to the following-described portion of their reservation, to wit: Beginning at the northeast corner of the said reservation, thence running along the north boundary line north sixty-seven degrees twenty-nine minutes west to the head of the Spokane River; thence down the Spokane River to the northwest boundary corner of the said reservation; thence south along the Washington Territory line twelve miles; thence due east to the west shore of the Coeur d'Alene Lake; thence southerly along the west shore of said lake to a point due west of the mouth of the Coeur d'Alene River where it empties into the said lake; thence in a due east line until it intersects with the eastern boundary line of the said reservation; thence northerly along the said east boundary line to the place of beginning.

Article 2.

And it is further agreed, in consideration of the above, that the United States will pay to the said Coeur d'Alene tribe of Indians the sum of five hundred thousand dollars, the same to be paid to the said Coeur d'Alene tribe of Indians upon the completion of all the provisions of this agreement.

Article 3.

It is further agreed that the payment of money aforesaid shall be made to the said tribe of Indians pro rata or share and share alike for each and every member of the said tribe as recognized by said tribe now living on said reservation.

Article 4.

It is further agreed and understood that this agreement shall not be binding on either party until the former agreement now existing between the United States by the duly-appointed commissioners and the said Coeur d'Alene tribe of Indians, bearing date March twenty-sixth, eighteen hundred and eighty-seven, shall be duly ratified by Congress; and in the event of the ratification of the aforesaid agreement of March twenty-sixth, eighteen hundred and eighty-seven, then this agreement to be and remain in full force and effect but not binding on either party until ratified by Congress. In witness whereof the said Benjamin Simpson, John H. Shupe, and Napoleon B. Humphrey, on the part of the United States, and the chiefs, headmen, and other adult

male Indians, on the part of the Indians, parties hereto, have hereunto set their hands and affixed their seals.

Done at De Smet Mission, on the Coeur d'Alene Reservation, in the Territory of Idaho, this the 9th day of September, in the year of our Lord one thousand eight hundred and eighty-nine.

Sec. 21. That for the purpose of carrying into effect the provisions of said two agreements with said Coeur d'Alene Indians there are hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, in the manner and for the purpose as hereinafter specifically stated the following sums, to wit: For the first installment of one hundred and fifty thousand dollars, as provided for in article six of the first of said agreements, thirty thousand dollars, to be expended for the building and erection of said Coeur d'Alene Indian Reservation of a saw and grist mill, to be operated by steam, and for the payment of the wages of the engineer and miller to be employed in said mill, respectively, the remaining portion of said thirty thousand dollars, if any, to be expended in the purchase of such useful and necessary articles as shall best promote the progress, comfort, improvement, education, and civilization of said Coeur d'Alene Indians, all of said articles to be purchased, and said engineer and miller to be employed as near as may be in strict conformity with articles nine and ten of the first of said agreements. And for the purpose of meeting the requirements of articles two and three of the second agree-

ment aforesaid the sum of five hundred thousand dollars is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be paid by the United States to the said Coeur d'Alene tribe of Indians upon their compliance with all the provisions of the said second agreement hereinbefore recited, the same to be paid to the said tribe of Indians pro rata, or share and share alike, for each and every member of the said tribe as recognized by said tribe now living on said reservation.

Section 22. That all lands so sold and released to the United States, as recited or described in both of said agreements, and not heretofore granted or reserved from entry or location, shall, on the passage of this act, be restored to the public domain, and shall be disposed of by the United States to actual settlers only, under the provisions of the homestead law, except section twenty-three hundred and one of the Revised Statutes of the United States, which shall not apply, and under the law relative to town sites or to locators or purchasers under the mineral laws of the United States: *Provided,* That each settler or purchaser under and in accordance with the provisions of said homestead act, shall pay to the United States, for the land so taken by him, in addition to the fees provided by law, and within five years from the date of the first original entry, the sum of one dollar and fifty cents per acre, one-half of which shall be paid within two years; but the rights of honorably discharged Union soldiers and sailors, as defined and described in sections twenty-three hundred and four and

twenty-three hundred and five of the Revised Statutes of the United States shall not be abridged, except as to the said sum to be paid as aforesaid: *Provided further,* That the Secretary of the Interior shall cause to be surveyed for and patented to Frederick Post, upon his making final proof of all thereof before the register and receiver of the proper United States land office, and to the satisfaction of the Commissioner of the General Land Office and Secretary of the Interior, and paying therefor two dollars and fifty cents per acre and the cost of making such survey of such portion of said reservation as is recited in the agreement in word and figures as follows, to wit:

"Know all men by these presents that I, Andrew Seltice chief of the Coeur d'Alene Indians, did on the first day of June, A. D. eighteen hundred and seventy-one, with the consent of my people, when the country on both sides of the Spokane River belonged to me and my people, for a valuable consideration sell to Frederick Post the place now known as Post Falls, in Kootenai County, Idaho, to improve and use the same (water-power); said sale included all three of the river channels and islands, with enough land on the north and south shores for water-power and improvements; and have always protected the said Frederick Post, for eighteen years, in the rights there and then conveyed, and he has always done right with me and my people. We, the chiefs of the Coeur d'Alenes, have signed articles of agreement with the Government to sell the portion of the reservation joining Post Falls, in which we have excepted

the above-prescribed rights, before conveyed to Frederick Post, and no Indian and no white man except Frederick Post have any rights on the above-described lands and river channels; the said Frederick Post has fulfilled all of his agreements with me and my people by improving the water-power and building mills at great expense, and I hereby authorize him to build a house and take full possession of the above-described lands on the reservation side, so that when the treaty is confirmed he may have full possession and protection of the Government in the same.

"Given under my hand and seal this 16th day of Sept'r., A. D. 1889.

his
"ANDREW x SELTICE.
mark.

APPENDIX III

LAW AND ORDER REGULATIONS

As amended August 3, 1938,
to apply to the coeur
d'Alene Indian Reservation.

1938 COEUR D'ALENE LAW AND ORDER REGULATIONS

CHAPTER 1

Courts of Indian Offenses

Sec. 1 *Jurisdiction*

The Court of Indian Offenses hereinafter referred to will be construed to mean the Coeur d'Alene Court of Indian Offenses.

A Court of Indian Offenses shall have jurisdiction over all offenses enumerated in Chapter 5, when committed by any Indian, within the reservation or reservations for which the Court is established.

With respect to any of the offenses enumerated in Chapter 5 over which Federal or State courts may have lawful jurisdiction, the jurisdiction of the Court of Indian Offenses shall be concurrent and not exclusive. It shall be the duty of the said Court of Indian Offenses to order delivery to the proper authorities of the State or Federal Government or of any other tribe or reservation, for prosecution, any offender, there to be dealt with according to law or regulations authorized by law, where such authorities consent to exercise jurisdiction lawfully vested in them over the said offender.

For the purpose of the enforcement of these regulations, an Indian shall be deemed to be any person of Indian descent who is a member of any recognized Indian tribe now under Federal jurisdiction, and a "reservation" shall be taken to include all territory within reservation boundaries, including fee patented lands, roads, waters, bridges, and lands used for agency purposes.

All Indians employed in the Indian Service shall be subject to the jurisdiction of the Court, but any such employee appointed by the Secretary of the

Interior shall have the right of appeal to the Secretary from any sentence of the Court and no such sentence appealed shall become effective until it shall have been approved by the Secretary.

APPENDIX IV

CONSTITUTION AND BY-LAWS OF THE COEUR D'ALENE TRIBE, IDAHO

(Revised-February 3, 1961)

PREAMBLE

We, the Indians of the Coeur d'Alene Reservation in Idaho, in order to build an independent and honorable life, and to promote the common welfare of the Tribe, do hereby ordain and establish this Constitution and By-Laws.

Article I — Territory

This tribal organization, to be known as the Coeur d'Alene Tribe, shall include all the trust and tribal lands within the original confines of the Coeur d'Alene Reservation as established by Executive Orders of June 14, 1867 and November 8, 1873, and shall extend to such other lands as may be hereafter added thereto.

Article II — Membership

Section 1. The membership of the Coeur d'Alene Tribe shall consist as follows of:

(a) All Indians whose names appear on the official census roll of the Coeur d'Alene Tribe as of July 1, 1940; Provided, that corrections may be made in said roll by the Tribal Council until January 1, 1962, subject to the approval of the Secretary of the Interior or his authorized representative. Applications for corrections of said roll must be filed with the Secretary of the Coeur d'Alene Tribal Council on or before July 1, 1961.

(b) All children of one-fourth or more Indian blood born subsequent to July 1, 1940, to any member of the tribe.

Section 2. The Tribal Council shall have power to promulgate ordinances, subject to the approval of the Secretary of the Interior or his authorized representative, governing future membership, provided that no individual of less than one-fourth Indian blood shall be admitted to membership hereafter.

Article III — Governing Body

Section 1. The governing body of the Coeur d'Alene Tribe shall be a Tribal Council consisting of seven members duly elected to serve three years.

Section 2. The Tribal Council shall elect from its membership (1) a chairman, (2) a vice-chairman, (3) a secretary-treasurer, and may appoint or employ such other officers and committees as may be deemed necessary.

Section 3. No person shall be eligible for election to the Tribal Council unless he shall be a member of the Coeur d'Alene Tribe and shall have resided within the boundaries of the reservation for a period of one year next preceding his election and be at least 21 years of age.

Section 4. The Tribal Council shall be the sole judge of the qualifications of its members.

Article IV — Nominations and Elections

Section 1. The candidates for membership in the Tribal Council shall be elected by popular vote at a meeting of the tribe on the first Saturday in May of each year.

Section 2. The first election of the Tribal Council hereunder shall be called and supervised by the Superintendent of the Northern Idaho Agency and the present Council within sixty days after approval of this Constitution by the Commissioner of Indian Affairs.

Section 3. At the first election, the three candidates receiving the highest number of votes shall hold office for three years. The two candidates receiving the next highest number of votes shall hold office for two years. The two candidates receiving the next highest number of votes shall hold office for one year. Thereafter, elections for the Tribal Council shall be held each year for two members of the Tribal Council except every third year when three shall be elected. After the first election, members of the Tribal Council shall be elected to serve for a term of three years, or until their successors are duly elected and qualified.

Section 4. All elections except the first shall be held in accordance with rules laid down by the Tribal Council.

Section 5. The time and place of voting shall be designated by the Tribal Council, and they shall certify to the election of the members of the Council within five days after said election.

Section 6. Any enrolled member of the Couer d'Alene Tribe who is twenty-one (21) years of age or over shall be entitled to vote.

Article V — Installation of Councilmen

Section 1. Each member of the Tribal Council and each officer elected or appointed hereunder shall take an oath of office prior to assuming the duties thereof.

Article VI — Vacancies and Removal from Office

Section 1. If a councilman should die, resign, be removed from office, permanently leave the reservation, or be convicted of a felony, the Tribal Council shall declare the position vacant and appoint a successor to serve until the next general election.

Section 2. The Tribal Council may, by a majority vote of the total membership of the Council, expel or suspend any of its members for neglect of duty or gross misconduct. Before any vote for expulsion is taken, such member or officer shall be given a written statement of the charges against him at least five days before the meeting of the Council before which he is to appear, and he shall be given an opportunity to answer any and all charges at a designated Council meeting. The decision of the Council shall be final.

Article VII — Powers and Duties of the Tribal Council

Section 1. The Tribal Council shall have the following powers subject to any limitations imposed by the Statutes or the Constitution of the United States:

(a) To represent the Tribe and negotiate with outside agencies and persons.

(b) To administer all tribal property by ordinances subject to the approval of the Commissioner of Indian Affairs.

(c) To borrow money, subject to the approval of the Commissioner of Indian Affairs, from the Indian credit fund or from any other governmental agency, and to pledge or assign future tribal income as security for such loans:

(d) To promulgate and enforce ordinances which shall be subject to the approval of the Secretary of the Interior or his duly authorized representatives governing the conduct of the members of the Tribe; to establish a reservation court and to adopt a suitable code for the maintenance of law and order which shall be subject to the approval of the Secretary of the Interior or his duly authorized representative;

(e) To levy license fees and taxes upon members through the adoption of ordinances that shall be subject to the approval of the Commissioner of Indian Affairs provided that any such ordinances shall not apply to members of the Tribe until approved by popular referendum;

(f) To exclude from the restricted lands of the reservation persons not legally entitled to reside thereon under ordinances which shall be subject to the approval of the Secretary of the Interior or his duly authorized representative;

(g) To employ legal counsel, the choice of attorney and the fixing of attorney fees to be approved by the Secretary of the Interior or his duly authorized representative.

Article VIII — Amendments

This Constitution and By-Laws may be amended by a majority vote of the qualified members of the Tribe who vote at an election called for that purpose by the Commissioner of Indian Affairs.

It shall be the duty of the Commissioner of Indian Affairs to call an election of any proposed amendment at the request of the majority of the Council, or upon presentation of a petition signed by at least thirty percent of the qualified voters of the Tribe, but no amendment shall become effective until it shall have been approved by the Commissioner of Indian Affairs.

APPENDIX V

LAW AND ORDER CODE

OF THE

COEUR D'ALENE TRIBE OF INDIANS

ADOPTED: July 24, 1962 . . . Resolution 1963 (9)

AMENDED: August 30, 1962

Resolutions 32(62), 32(63), 33(63) and 34(63)

APPROVED: Bureau of Indian Affairs letter of August 24, 1962

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APPENDIX

Resolution 1963(9) – Dated July 24, 1962, adopting Law and Order Code

Amendments – Resolutions 31(63), 32(63), 33(63) and 34(63) dated August 30, 1962

Letter dated August 24, 1962, from the Bureau of Indian Affairs approving the Law and Order Code

APPENDIX VI

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Judicial, Prevention & Enforcement Services
Portland Area Office
Post Office Box 3785
Portland, Oregon 97208
December 1, 1972

Through: Superintendent, Northern Idaho Agency
Mr. Hillary Skanen
Chairman, Coeur d'Alene Tribal Council
Plummer, Idaho 83851

Dear Mr. Skanen:

Coeur d'Alene Resolution 11 (73), enacted July 13, 1972, governing the sale, distribution and taxation of tobacco products within the Coeur d'Alene Indian Reservation has been reviewed by the Regional Solicitor's office and this office. A copy of the Solicitor's comments is enclosed for your information.

Section 7 of the ordinance requires an operator to obtain a Federal Indian Trader's License before he may obtain a Tribal Tobacco Outlet License. It will be necessary for the Tribal Council to waive Section 7 as to any applicant who is a full-blood Coeur d'Alene since the law, as well as the regulations, authorizes an Indian of full blood to trade upon his reservation without obtaining a Federal Trader's License. This does not mean that a full blood is exempt from

obtaining the tribal license but only that the Tribe may not require that he also obtain a Federal Trader's License. Subject to the above paragraph, we approve the ordinance pursuant to authority delegated by Secretarial Order 2508 and 10 BIAM 3.1.

Sincerely yours,

Area Director

RESOLUTION

Coeur d'Alene Tobacco Ordinance

WHEREAS, the Coeur d'Alene Tribal Council as the governing body of the Coeur d'Alene Indian Tribe is charged by the Tribal Constitution and By-Laws to manage the affairs of the Coeur d'Alene Tribe and has the responsibility of protecting the health, security and general welfare of the Tribe and its members, and

WHEREAS, the State of Idaho is without jurisdiction on the Coeur d'Alene Indian Reservation to regulate and control Indian Smoke Shops or other outlets operated by Tribal members, and

WHEREAS, the Coeur d'Alene Tribal Council deems it essential to the health, security and general welfare of the Coeur d'Alene Tribe and its members to enact a comprehensive tobacco ordinance regulating sale and distribution of cigarettes and other tobacco products and levying an excise tax upon their distribution and sale on the Coeur d'Alene Indian Reservation,

NOW, THEREFORE, the Coeur d'Alene Tribal Council does hereby promulgate and enact the following ordinance:

AN ORDINANCE

Governing sale, distribution and
taxation of tobacco products
within the Coeur d'Alene Indian Reservation

Section 1. *Title*

This ordinance shall be known as the Coeur d'Alene Tobacco Ordinance.

Section 2. *Definitions*

As used in this ordinance, the following words and phrases shall each have the designated meaning unless a different meaning is expressly provided or the context is clearly indicated:

(1) "Tribe" shall mean the Coeur d'Alene Indian Tribe.

(2) "Council" shall mean the Coeur d'Alene Tribal Council.

(3) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

(4) "Tobacco Products" shall mean cigarettes, cigars, smoking tobacco, snuff, chewing tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking.

(5) "Tobacco Outlets" shall mean a Tribally licensed retail sales business selling tobacco products on the Coeur d'Alene Indian Reservation.

(6) "Operator" shall mean an enrolled member of the Coeur d'Alene Tribe licensed by the Tribe to operate a Tobacco Outlet.

Section 3. *Licensing of Tobacco Outlets.*

The Council may license one or more Tobacco Outlets within the Coeur d'Alene Indian Reservation.

Section 4. *Nature of Outlet.*

Each Tobacco Outlet licensed hereunder shall be managed by an operator pursuant to a license granted by the Council hereunder, and shall also be managed pursuant to a Federal Indian Trader's License as provided in Section 7 hereof.

Section 5. *Application for Tobacco Outlet License.*

Any enrolled member of the Coeur d'Alene Indian Tribe may apply upon an application form provided by the Council for a Tobacco Outlet license. The Tribal Secretary-Treasurer shall receive and process applications, and be the official representatives of the Tribe and the Council in matters relating to Tobacco Outlets excise tax collections, etc. Each application shall be accompanied by an application charge or fee of $50.00.

Section 6. *Tobacco Outlet License.*

Upon approval of an application, the Council shall issue the applicant a Tobacco Outlet license for a one-year period which shall entitle the operator to establish and maintain one Tobacco Outlet on the Coeur d'Alene Indian Reservation. The license shall be nontransferable. It shall be renewable at the discretion of the Council each year by filing a new application form and payment of the application fee as provided in Section 5.

Section 7. *Trader's License*

No tobacco Outlet license shall be issued to an operator until he has obtained a Federal Indian Trader's license from the Superintendent of the Northern Idaho Indian Agency.

Revocation of the Federal Indian Trader's License shall be grounds for revocation of the operator's Tobacco Outlet license.

Section 8. *Excise Tax Imposed.*

There is levied and there shall be collected as hereinafter provided, a tax upon the distribution of all cigarettes sold or distributed by a Tobacco Outlet in the amount of 2½ cents per package. The Council may levy an additional tax upon the distribution of cigarettes and other tobacco products as it deems desirable.

The excise tax levied hereunder shall be added to the retail selling price of tobacco products sold to the ultimate consumer.

Section 9. *Purchase of Tobacco Inventory.*

All wholesale purchases of cigarettes and tobacco products by a Tobacco Outlet shall be from wholesalers within the State of Idaho. Exception to this section can be made as to special cigarette or other tobacco products that can not be purchased from an Idaho Wholesaler. The Tribe shall have no legal responsibility for any unpaid bills owed by a Tobacco Outlet to a wholesale supplier or to any other person. The Operator shall make arrangements with his wholesalers to send copies of all his Purchase Invoices to the Tribal Office, Plummer Sub-Agency.

Section 10. *Restricted Sales to Non-Indians.*

An operator may not sell more than five cartons of cigarettes per sale to a non-Indian. The Council may restrict

sales of other tobacco products to non-Indians as it deems necessary.

Section 11. *Restricted Sales to Minors.*

An operator may not sell any tobacco products to any person under the age of 18 years.

Section 12. *Other Business by Operator.*

An operator may conduct another business simultaneously with managing a Tobacco Outlet for the Tribe. The other business may be conducted on the same premises and the operator shall not be required to maintain separate books of account for the other business.

Section 13. *Tribal Liability and Credit.*

An operator is forbidden to represent or give the impression to any supplier or any other person with whom he does business that he is an official representative of the Tribe, authorized to pledge tribal credit or financial responsibility for any of the expenses of his business operation. The operator shall hold the Coeur d'Alene Indian Tribe harmless from all claims and liability of whatever nature. The Tribal Council may revoke the operator's Outlet License if it is not operated in a business like manner or if it does not remain financially solvent or does not pay its operating expenses and bills before they become delinquent.

The operator shall maintain at his expense adequate insurance covering liability, fire, theft, vandalism and other insurable risks. The liability insurance shall have coverage of at least $10,000.00 per person and $25,000.00 per incident.

Section 14. *Audit and Inspection Bond.*

All of the books and other business records of the Tobacco Outlet shall be available for inspection and audit by the Tribal Council or its authorized representative at any reasonable time.

The excise tax owed the Tribe shall be remitted to the Tribal office monthly with reports thereof on forms to be supplied by the Tribe. The operator shall furnish a satisfactory bond to the Tribe in the principal amount of $10,000.00, guaranteeing his payment of excise tax.

Section 15. *Revocation of Tobacco Outlet License.*

Failure of an operator to abide by the requirements of this ordinance and any additional requirement imposed by the Council will constitute grounds for revocation of the operator's Tobacco Outlet license as well as enforcement of the penalties provided in Section 16 below.

Section 16. *Violation—Penalties.*

Any person violating the provisions of this ordinance shall be guilty of an offense and subject to a fine in Tribal Court of not less than $50.00 nor more than $250.00 and forfeiture of all of the remaining stock of tobacco products distributed hereunder and situate in his Tobacco Outlet. The tribal law enforcement officers shall be empowered to seize forfeited tobacco products.

Section 17. *Separability.*

If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this ordinance, or the application of the provision to other persons of circumstances is not affected.

CERTIFICATION

The foregoing resolution was adopted by the Coeur d'Alene Tribal Council at a meeting held the 13th day of July, 1972, at Plummer Sub-Agency, near Plummer, Idaho, with the required quorum present, by a vote of 4 for and 0 against.

APPENDIX VII

Idaho Code

CHAPTER 51

Jurisdiction in Indian Country

67-5101. State jurisdiction for civil and criminal enforcement concerning certain matters arising in Indian country.—The state of Idaho, in accordance with the provisions of 67 Statutes at Large, page 589 (Public Law 280) hereby assumes and accepts jurisdiction for the civil and criminal enforcement of state laws and regulations concerning the following matters and purposes arising in Indian country located within this state, as Indian country is defined by title 18, United States Code 1151, and obligates and binds this state to the assumption thereof:

A. Compulsory school attendance

B. Juvenile delinquency and youth rehabilitation

C. Dependent, neglected and abused children

D. Insanities and mental illness

E. Public assistance

F. Domestic relations

G. Operation and management of motor vehicles upon highways and roads maintained by the county or state, or political subdivisions thereof. [1963, ch. 58, § 1, p. 224.]

67-5102. Additional state jurisdiction with consent of tribe governing body.—Additional state jurisdiction in criminal and civil causes of action may be extended to particular reservations or Indian country with the consent of the governing body of the tribe occupying the Indian country effected [affected] by the assumption of such additional jurisdiction. This may be achieved by negotiation with the tribe or by unilateral action by the tribe. In every case the extent of such additional jurisdiction shall be determined by a resolution of the tribal governing body and become effective upon the tribe's transmittal of the resolution to the

attorney general of the state of Idaho. Such resolution may effectively accept jurisdiction as to any particular field of criminal or civil jurisdiction. All state jurisdiction extended by virtue of this act shall be concurrent (and not exclusive) with jurisdiction in the same matters existing in the tribes or the federal government. [1963, ch. 58, § 2, p. 224.]

67-5103. Matters excepted from state jurisdiction.— Nothing in this act shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, statute, or executive order with respect to Indian land grants, hunting, trapping or fishing or the control, licensing, or regulation thereof. [1963, ch. 58, §3, p. 224.]

APPENDIX VIII

25 U.S.C. 331

INDIANS

§ 331. Allotments on reservations; irrigable and nonirrigable lands

In all cases where any tribe or band of Indians has been or shall be located upon any reservation created for their use by treaty stipulation, Act of Congress, or Executive order, the President shall be authorized to cause the same or any part thereof to be surveyed or resurveyed whenever in his opinion such reservation or any part may be advantageously utilized for agricultural or grazing purposes by such Indians, and to cause allotment to each Indian located thereon to be made in such areas as in his opinion may be for their best interest not to exceed eighty acres of agricultural or one hundred and sixty acres of grazing land to any one Indian. And whenever it shall appear to the President that lands on any Indian reservation subject to allotment by authority of law have been or may be brought within any irrigation project, he may cause allotments of such irrigable lands to be made to the Indians entitled thereto in such areas as may be for their best interest, not to exceed, however, forty acres to any one Indian, and such irrigable land shall be held to be equal in quantity to twice the number of acres of nonirrigable agricultural land and four times the number of acres of nonirrigable grazing land: *Provided*, That the remaining area to which any Indian may be entitled under existing law after he shall have received his

proportion of irrigable land on the basis of equalization herein established may be allotted to him from nonirrigable agricultural or grazing lands: *Provided further,* That where a treaty or Act of Congress setting apart such reservation provides for allotments in severalty in quantity greater or less than that herein authorized, the President shall cause allotments on such reservations to be made in quantity as specified in such treaty or Act, subject, however, to the basis of equalization between irrigable and nonirrigable lands established herein, but in such cases allotments may be made in quantity as specified herein, with the consent of the Indians expressed in such manner as the President in his discretion may require. Feb. 8, 1887, c. 119, § 1, 24 Stat. 388; Feb. 28, 1891, c. 383, §1, 26 Stat. 794; June 25, 1910, c. 431, § 17, 36 Stat. 859.

APPENDIX IX

25 U.S.C. 461-463

MISCELLANEOUS

PROTECTION OF INDIANS AND CONSERVATION OF RESOURCES

§ 461. Allotment of land on Indian reservations

No land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian. June 18, 1934, c. 576, §1, 48 Stat. 984.

§ 462. Existing periods of trust and restrictions on alienation extended

The existing periods of trust placed upon any Indian lands and any restriction on alienation thereof are hereby extended and continued until otherwise directed by Congress. June 18, 1934, c. 576, § 2,4, Stat. 984.

§ 463. Restoration of lands to tribal ownership; protection of existing rights; Papago Indian Reservation

(a) The Secretary of the Interior, if he shall find it to be in the public interest, is hereby authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation opened before June 18, 1934, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States: *Provided, however,* That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by sec-

tions 461, 462, 463, 464, 465, 466-470, 471-473, 474, 475, 476-478, and 479 of this title: *Provided further,* That this section shall not apply to lands within any reclamation project authorized before June 18, 1934, in any Indian reservation.

(b) (1), (2) Repealed. May 27, 1955, c. 106 § 1, 69 Stat. 67.

(3) Water reservoirs, charcos, water holes, springs, wells, or any other form of water development by the United States or the Papago Indians shall not be used for mining purposes under the terms of sections 461, 462, 463, 464, 465, 466-470, 471-473, 474, 475, 476-478, and 479, of this title, except under permit from the Secretary of the Interior approved by the Papago Indian Council: *Provided,* That nothing herein shall be construed as interfering with or affecting the validity of the water rights of the Indians on this reservation: *Provided further,* That the appropriation of living water heretofore or hereafter affected, by the Papago Indians is hereby recognized and validated subject to all the laws applicable thereto.

(4) Nothing herein contained shall restrict the granting or use of permits for easements or rights-of-way; or ingress or egress over the lands for all proper and lawful purposes. June 18, 1934, c. 576 § 3, 8 Stat. 984; Aug. 28, 1937, c. 866, 50 Stat. 862; May 27, 1955, c. 106.

APPENDIX X

25 U.S.C. 476

§ 476. Organization of Indian tribes; constitution and by-laws; special election

Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and by-laws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and by-laws, when ratified as aforesaid and approved by the Secretary of the Interior, shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and by-laws may be ratified and approved by the Secretary in the same manner as the original constitution and by-laws.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local

Governments. The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress. June 18, 1934, c. 576, § 16, 48 Stat. 987.

APPENDIX XI

25 U.S.C. 1301-1322

CHAPTER 15.—CONSTITUTIONAL RIGHTS OF INDIANS (NEW)

SUBCHAPTER I.—GENERALLY

§ 1301. Definitions

For purposes of this subchapter, the term—

(1) "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;

(2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and

(3) "Indian court" means any Indian tribal court or court of Indian offense.

Pub. L. 90-284, Title II, §201, Apr. 11, 1968, 82 Stat. 77.

§ 1302. Constitutional rights

No Indian tribe in exercising powers of self-government shall—

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable

search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six months or a fine of $500, or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

Pub. L. 90-284, Title II, § 202, Apr. 11, 1968, 82 Stat. 77.

§ 1303. Habeas corpus

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

Pub. L. 90-284, Title II, § 203, Apr. 11, 1968, 82 Stat. 78.

§ 1311. Model code

The Secretary of the Interior is authorized and directed to recommend to the Congress, on or before July 1, 1968, a model code to govern the administration of justice by courts of Indian offenses on Indian reservations. Such code shall include provisions which will (1) assure that any individual being tried for an offense by a court of Indian offenses shall have the same rights, privileges, and immunities under the United States Constitution as would be guaranteed any citizen of the United States being tried in a Federal court for any similar offense, (2) assure that any individual being tried for an offense by a court of Indian offenses will be advised and made aware of his rights under the United States Constitution, and under any tribal constitution applicable to such individual, (3) establish proper qualifications for the office of judge of the court of Indian offenses, and (4) privide for the establishing of educational classes for the training of judges of courts of Indian offenses. In carrying out the provisions of this subchapter, the Secretary of the Interior shall consult with the Indians, Indian tribes, and interested agencies of the United States.

Pub. L. 90-284, Title III, § 301, Apr. 11, 1968, 82 Stat. 78.

§ 1312. Authorization of appropriations

There is hereby authorized to be appropriated such sum as may be necessary to carry out the provisions of this subchapter.

Pub. L. 90-284, Title III, § 302, Apr. 11, 1968, 82 Stat. 78.

§ 1321. Assumption by State of criminal jurisdiction—Consent of United States; force and effect of criminal laws

(a) The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

Alienation, encumbrance, taxation, and use of property; hunting, trapping, or fishing

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust

by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

Pub. L. 90-284, Title IV, § 401, Apr. 11, 1968, 82 Stat. 78.

§ 1322. Assumption by State of civil jurisdiction—Consent of United States; force and effect of civil laws

(a) The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

Alienation, encumbrance, taxation, use, and probate of property

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

Force and effect of tribal ordinances or customs

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

Pub. L. 90-284, Title IV, § 402, Apr. 11, 1968, 82 Stat. 79.